

BEFORE THE ACADEMIC FACILITIES REVIEW BOARD

1. On August 8, 2013, the Academic Facilities Review Board conducted a hearing pursuant Ark. Code Ann. §§ 6-20-2513 and 6-20-2516, and The Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation (dated June 2012). Before the Board was the appeal of the North Little Rock School District ("School District"), which was appealing a decision of the Division of Public School Academic Facilities and Transportation ("Division") to include the space of the Pike View Elementary School in its suitability analysis related to Partnership Program project numbers 1314-6002-700, 701, 702, 703, and 707.

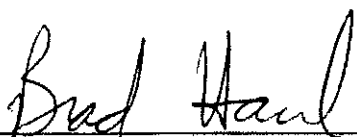
2. On June 25, 2013, the School District appealed the finding of the Division that the square footage contained at the Pike View Elementary School building, which the School District planned to use to serve pre-Kindergarten students, would be included in the suitability computation. A copy of the School District's Appeal is attached as Exhibit 1.

3. On July 25, 2013, the Division responded to the appeal. A copy of the Division's response is attached at Exhibit 2.

4. A hearing was held before the Board on August 8, 2013, at which time both the School District and Division were provided the opportunity to present additional information and argument.

DECISION

Upon consideration of the written appeal, written response, and additional information/argument presented by the School District and Division during the August 8 hearing, the Board upholds the Division's determination.



Brad Hammond, Acting Chairman
Academic Facilities Review Board

8/16/2013

Date

RECEIVED
BEFORE THE ACADEMIC FACILITIES REVIEW BOARD ATTORNEYS OFFICE

APPEAL OF WRITTEN DETERMINATION
OF THE DIVISION OF PUBLIC SCHOOL
ACADEMIC FACILITIES AND TRANSPORTATION
CONCERNING PARTNERSHIP PROGRAM
OF THE NORTH LITTLE ROCK SCHOOL DISTRICT

JUN 25 2013
DEPARTMENT OF EDUCATION
GENERAL DIVISION

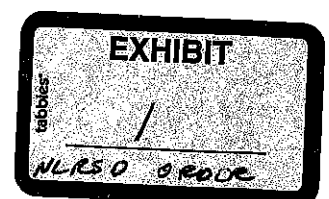
I. INTRODUCTION/STATEMENT OF ISSUE

COMES NOW the North Little Rock School District (District), pursuant to Section 6.00 of the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation (Appeals Rules), and Section 8.00 of the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program (Partnership Rules), and submits this appeal to the Academic Facilities Review Board (Board) of the written determination of the Division of Public School Academic Facilities and Transportation (Division), only as to that part of the Partnership Project submission concerning the construction of five (5) new elementary schools and the inclusion of the Pike View School space in its suitability analysis in that part of the Partnership Project analysis.

Specifically, the District contends that the Division acted outside the legal authority vested in it by improperly including the square footage contained in the Pike View School building in its suitability review of the elementary school projects based on Arkansas law and regulations governing the Partnership Program. In the alternative, based upon Section 4.03 of the Partnership Rules, the Pike View facility should be excluded from the space calculation as a prudent and resourceful re-use of that facility by the District.

II. REGULATORY ANALYSIS OF THE FACTS

On or about March 1, 2012, the District submitted its Master Plan and requests for state partnership assistance to the Division for a comprehensive unique, single, district-wide project. In its "Master Plan Narrative" (Tab 6 "Master Plan Narrative Summary") (attached hereto as Exhibit "1"), the



District set forth its "Strategic Plan Reconfiguration 2012." Prior to this project, the District was comprised of one (1) Pre-K only campus, thirteen (13) elementary schools, one (1) sixth-grade campus, three (3) middle schools (with one containing an ALE program), one (1) high school campus (Grades 9-10), one (1) high school campus (Grades 11-12), and one (1) alternative school (Grades 9-12). This Partnership Project planned a district wide reconfiguration which would result in the District having one (1) Pre-K center, nine (9) elementary schools, one (1) middle school, one (1) high school, and one (1) alternative school. This plan will cause eight (8) schools to be closed, one (1) K-5 elementary school to be converted to a Pre-K (Pike View), the current alternative school (Argenta Academy) to be closed, and one (1) middle school (Rose City), to be converted into an alternative school (Grades 6-12). In summary, the number of campuses is to decrease from twenty-one (21) campuses to thirteen (13) campuses.

Specifically, Pike View would exclusively house Pre-K students. Section 3.08 of the Partnership Rules states that "the configuration or reconfiguration is determined by the school district." The Pre-K students would be coming to Pike View from the Redwood school, while students previously at Pike View would attend either a new elementary facility on a school campus for which the Division has determined the District has no other currently existing appropriate school facilities (new Lakewood Elementary School) (See Section 3.32.2 of the Partnership Rules) or an academic facility built on an existing campus with existing educational facilities (Crestwood Elementary School) (See Section 3.32.1 of the Partnership Rules).

The reconfiguration plan submitted by the District to the Division was applicable to the entire District. The plan requires the closure of Belwood, Lynch Drive, North Heights, Park Hill, and Pike View Elementary Schools; Redwood Pre-K; Poplar Street Middle School; and Argenta Academy. Redwood's Facility Condition Index (FCI), as contained in the District's Master Plan submission was 92% (or .92). Redwood is an approximately fifty (50) year old structure. The closure of Redwood will necessitate the District's replacement of Pike View's "academic facility space" with Pre-K space to accommodate the former Redwood students. All of the District's elementary campuses with FCIs above .65 have been authorized by the Division to be replaced or demolished except for Pike View, whose space

the Division has chosen to count against the District. The Division agrees that Pike View has a FCI of .65 or higher.

a.) Suitability Analysis per Section 3.32.2 of the Partnership Rules:

Section 3.32.2 of the Partnership Rules is applicable when the Division is conducting a suitability analysis for the purpose of legally determining the prudent and resourceful use of the state's financial resources, and the district in question is proposing to build a new academic facility on a school campus for which the Division determines there are no other currently existing appropriate school facilities.

The effect of the reconfiguration as to Pike View will cause some of the students who formerly attended the school when it was a K-5 campus to be redirected to a new elementary facility on a school campus for which the Division has determined contains no other currently existing appropriate facilities (new Lakewood Elementary School) (See Partnership Rules, Section 3.32.2). The former Pike View elementary space is thus being replaced from use as an "academic facility" (i.e., K-12) space with another elementary school, and is being reconfigured to non-academic facility space as a Pre-K (See Partnership Rules, Sections 3.01 and 3.01.3). As a result, the Division was required to conduct its suitability analysis for most of the new elementary schools (Amboy, Boone Park, Glenview, Lakewood and Meadow Park) pursuant to Section 3.32.2, as the District is proposing to build new academic facilities on school campuses for which the Division has determined that there are no other currently existing appropriate school facilities.

Section 3.32.2 requires, in pertinent part, as follows:

When a school district is proposing to build a new academic facility on a school campus for which the Division determines there are no other currently existing appropriate school facilities or the district is currently seeking a separate LEA number for the new academic facility, the Division shall compare the total gross square footage required by the POR for the proposed facility for the appropriate student grade population to that currently existing total gross square footage available in the district for the appropriate student grade population in their final grade configuration less the gross square footage to be demolished as part of the proposed project. The Division shall also include other campuses and grades affected by grade reconfigurations as part of the project. After making the comparison the school will only be deemed to not be suitable and thus eligible for state financial participation on a proposed facility project for the additional space required in the POR not currently available in the school district for the appropriate student population in their final grade reconfiguration.

Additionally, Section 3.08 of the Partnership Rules states that “the configuration or reconfiguration is determined by the school district.”

b.) Suitability Analysis per Section 3.32.1 of the Partnership Rules:

While the District contends that the proper suitability analysis for the Division to use in this setting falls under Section 3.32.2 of the Partnership Rules, to the extent that the suitability analysis process under Section 3.32.1 would be applicable to this unique, district-wide reconfiguration, the District would also receive a favorable suitability analysis as to Pike View, as is shown next.

Section 3.32.1 of the Partnership Rules is applicable when the Division is conducting a suitability analysis for the purpose of legally determining the prudent and resourceful use of the state’s financial resources, and the district in question is proposing to build an academic facility on an existing campus with existing educational facilities. The effect of the reconfiguration as to Pike View will cause some of the students who formerly attended the school when it was a K-5 campus to be redirected to an academic facility built on an existing campus with existing educational facilities (Crestwood Elementary School). The former Pike View elementary space is thus being replaced from use as an “academic facility” (i.e., K-12) space with another elementary school, and is being reconfigured to non-academic facility space (See Partnership Rules, Sections 3.01 and 3.01.3). As a result, the Division was required to conduct its suitability analysis for Crestwood Elementary School pursuant to Section 3.32.1, as the District is proposing to build an academic facility on an existing campus with existing educational facilities. This Section requires, in pertinent part, that the Division shall compare the appropriate existing total gross square footage space of the existing facility on the campus to the total gross square footage space requirements of the POR for the proposed new school facility based on the projected student enrollment by grade level. After making the comparison, the school will only be deemed to not be suitable and thus eligible for state financial participation on a proposed facility project for the additional gross square footage space required in the POR not currently available on the school campus or on other campuses affected by grade reconfigurations as part of the project.

c.) Suitability Analysis - Conclusion: The Division was required to conduct a suitability analysis pursuant to either 3.32.1 or 3.32.2 of the Partnership Rules because the District was conducting a district-wide Partnership project with a systemic reconfiguration in which it was replacing Pike View (as well as other elementary schools) and redirecting those students into both new academic facilities on campuses which the Division had determined contained no other currently existing appropriate facilities (i.e., the existing facilities had FCIs of greater than .65), and academic facilities on existing campuses with existing educational facilities. Under neither scenario should the Division count the Pike View space against the District. Pike View has been submitted for reconfiguration as a Pre-K, which is specifically excluded from the definition of an academic facility and as such may not be counted in the academic facility space available to the District for the project in the final reconfiguration of grades for the project.

d.) FCI of .65 or Higher Analysis: In the alternative, even if the Division does count the Pike View space against the suitability needs of the District as academic facility space, Pike View space should still not be considered as excess suitability after applying a prudent and resourceful analysis. Section 4.03 of the Partnership Rules requires that when a facility's FCI is proven to be greater than .65 the district must show the renovation or **replacement** of the facility represents a prudent and resourceful expenditure of state funds to be considered a project. In conducting any analysis of a specific project under a facilities master plan, it is important to understand and consider the specific replacements, renovations, and new construction projects as part of a single, systemic overhaul. This consideration raises two points. First, the District's use of the Pike View facility for Pre-K is a prudent and resourceful use because the other options (donating the property, selling the aged building, or demolishing the campus) are wasteful and inefficient when compared to its needed use as a replacement Pre-K for the children leaving the Redwood facility. Second, the Division has essentially already declared the project as prudent and resourceful through its approval of the Crestwood and Lakewood Elementary projects which will be accepting the students leaving Pike View. The approval of the projects at these elementary schools begs the question: why would the Division declare the expansion of capacity at these elementary schools to accept the Pike View students if Pike View was still suitable and being used for those students? The rule specifically

holds a replacement as one route toward proving a usage is prudent and resourceful. The term “replacement” is not defined by rule. According to Black’s Law Dictionary replacement means “to supplant with substitute or equivalent.” Furthermore, at no place in the Partnership Rules are districts limited in the method or manner a facility may be replaced. As to Pike View, the District is replacing the former Pike View (FCI \geq .65) academic facility with other academic facilities in the District by reconfiguring Pike View as a Pre-K non-academic facility (Section 3.01.3 of the Partnership Rules) and assigning its students to other elementary schools.

III. ARGUMENT

The District, in support of its stated position, submits the following points:

- 1) Though Section 3.01.3 states that facilities **used** for pre-kindergarten education shall not be considered academic facilities, numerous references in 3.32.1, 3.32.2, and other areas, specifically state that the existing total gross square footage available in the district (suitability) is to be viewed in light of their “final grade reconfiguration.” The language of the Rule indicates that suitability will be assessed according to the grade configuration and available district space at the completion of the project. This means that the Pike View facility should have been considered a Pre-K facility when the Division assessed suitability, because that is its proposed repurposing and how it will exist in the “final grade reconfiguration.” As a Pre-K facility, it would not qualify under the rule as an academic facility. Therefore, the exclusion of the Pike View space cannot reasonably be denied by the Division on the basis of suitability, and thus is a prudent and resourceful use of the state’s financial resources;
- 2) Even if the Division determines that there is no lack of suitability, as Pike View along with several of the other former elementary schools have an FCI of higher than .65, the Division has approved the demolition or replacement of the other elementary schools, even including the old Glenview Elementary School (FCI of .631) and Belwood Elementary School (FCI of .639), which have FCI’s under .65. (See Division’s New School Project Suitability Review, attached hereto as

Exhibit "2") Pike View has been replaced per Section 4.03 of the Partnership Rules and as such has proven a prudent and resourceful use as required by the Partnership Rules. Section 4.03 is an exception to the portions of the Partnership Rules governing suitability. An appropriate definition of "replacement", which is not defined in the Partnership Rules, has been provided above and clearly covers the actions taken by the District as to Pike View; and

- 3) "Prudent and resourceful use of resources" should not be used solely as a measure or excuse to disallow a project, but rather as a determination of whether the proposed project makes reasonable and customary use of space in order to qualify a project as defined by law and regulation. Pike View is a part of the unique, district-wide project, which demonstrates that the project is "prudent and resourceful." Rather than simply sell or repurpose Pike View, as the Division is allowing the District to do with the Amboy, Belwood and North Heights Elementary Schools, which are listed as schools to "close" in the District's Master Plan Narrative, it is being replaced/repurposed for other district needs. This is a far more prudent and resourceful use of the space. As evidenced in the Division's agreement, if the project is submitted in the future with Pike View being used as Pre-K space, then the space would not be counted against the District for a project related to that campus. This narrow, time-limited application of the Partnership Rules to only future projects, as opposed to current submissions, is not prudent and resourceful. Every project is inherently a future project until it is implemented, whether that occurs in one year or five years. This fact is emphasized in Section 3.14, in defining the facilities master plan, which requires a 6 year strategy and enrollment projections reaching 10 years into the future. Instead, the District has shown a far more prudent and resourceful use of the space which complies with state law and regulations governing this Partnership Project and thus qualifies as prudent and resourceful. The Pike View project is a prudent and resourceful use of state resources, including but not limited to the following ways:

- Pike View's FCI means it is no longer suitable for use as academic facility space; *i.e.* the state will not participate to upgrade or expand Pike View for continued use as an elementary school;
- The Division has approved the functional replacement of Pike View in participating with the District in the Lakewood and Crestwood projects; and
- The District has listed the reconfiguration of Pike View from a Pre-K-5 facility to a strictly Pre-K facility on its Master Plan, indicating that the District will pay the total costs of the renovation.

IV. CONCLUSION

Wherefore, based upon the above, the District respectfully requests that the Academic Facilities Review Board find that the Division was in error when it included the square footage of the Pike View campus in its suitability analysis for the five (5) new elementary schools or in the alternative that the Division was in error when it did not consider Pike View as a prudent and resourceful use of space pursuant to Section 4.03; and make a final determination to grant the relief requested as to its Pike View campus, by increasing the number of square feet eligible for state financial participation from 41,481 square feet for each of the five (5) new elementary schools to 80,063 square feet per school, at the amount commensurate with the project cost amount and the District's wealth index and award the District appropriate funding accordingly.

The District, pursuant to Section 6.06 of the Appeals Rules, respectfully reserves the right to request a hearing in front of the Academic Facilities Review Board on this appeal.

Sincerely,


Superintendent, North Little Rock School District

Executed this 25th day of June, 2013.

Task 4 Complete a strategic plan using data gathered from study.

Strategic Planned Projects

After the study was conducted and the North Little Rock School District Board of Education voted to adopt the 5 yr Strategic Plan listed below. The plan consists of eight K-5 elementary campuses. There is one new middle school campus and one high school campus. There are also seven school closings, one K-5 converting over to a Pre-K and one alternative school. See chart below for detailed reconfiguration of district. See Appendix A & B for Committed and Planned projects.

Strategic Plan Reconfiguration 2012								
Elementary Schools	Facility Action	Facility Function	Classrms Per Grade	POR Sq Footage	Total GSF	New Capacity	2019-20 Enrollment	Excess Rooms
Asbury	NEW	Pre-K-5	3	53,719	65,562	473	624	
Edwood								
Edgewood	NEW	Pre-K-5	3	53,719	65,562	473	500	
Greenwood	Replacement	K-5	3	43,253	63,700	473	624	
Glenview	NEW	Pre-K-5	3	53,719	65,562	473	523	
Indian Hills	Renov/Add	K-5	3	43,253	60,863	624	624	
Linwood	NEW	K-5	3	53,719	64,032	473	624	
North Ridge								
North Ridge Park	NEW	Pre-K-5	3	53,719	67,612	473	500	
North Ridge Park Hill								
Plan View	Request to take out of Service - Make New Pre-K Center							
Redwood								
Southern Street	Renov/Add	Pre-K-5	3	12,386	71,963	473	473	
Totals				336,345	598,287	4408	4992	-22.0
Secondary Schools								
Lakewood Middle	NEW MS	Re: East	Re: East	Re: East	Re: East	Re: East	Re: East	
Poplar Street Middle								
Ridge Road Middle Charter	NEW MS	K-5	3	3,200	68,063	473	500	-1.0
Rose City Middle	Alternative	6-12					150	
Totals								
Argenta Academy								
High Schools								
NLR High School East	NEW MS	6-8		183,013	192,995	2,100	2582	-16.0
NLR High School West	NEW HS	6-8		419,940	480,259	3,000	3360	-12.0
Totals								
GRAND TOTAL:				939,298	1,271,541	9,508	11084	-50.0

Note: [Appendix A (Committed Projects List)]
[Appendix B (Future Partnership Projects)]

Exhibit

1

EXISTING SCHOOL SUITABILITY REVIEW

NEW SCHOOL PROJECT SUITABILITY REVIEW						
District:	N. LITTLE ROCK					
School:	S NEW E.S.					
Project Number:	1914-8002-701,707,703,702,700					
Project:	S NEW E.S.					
Review Date:	12/10/2012					
Area Manager:	MURRAY L BRITTON					
No change from 512 evaluation						
EXISTING SCHOOL NAME	SQUARE FEET	GRADE LEVELS	FCI	REPLACEMENT/ DEMOLITION JUSTIFIED?	EXCESS SF FROM POR SUITABILITY	COMMENTS
OLD AMBOY ES	38300	K-5	119	YES	0	
OLD BOONE PARK ES	47064	K-5	34.3	NO	47064	
OLD GLENVIEW ES	28789	K-5	65.1	YES	0	
OLD LAKEWOOD ES	30488	K-5	113.8	YES	0	
OLD MEADOW PARK ES	28319	K-5	63	NO	28319	
OLD BELWOOD ES	17224	K-2	63.9	YES	0	
OLD LYNCH DRIVE ES	60898	K-5	48.1	NO	60898	
OLD NORTH HEIGHTS	42219	K-5	80	YES	0	
OLD PARK HILL (SELL 7)	33226	K-5	31.6	NO	33226	MAY SEL
OLD PIKE VIEW (REPURPOSE)	36582	K-5	30	NO	36582	
SEVENTH STREET ES	54166	K-5			0	
INDIAN HILLS ES	68553	K-5			0	
CRESTWOOD ES	63428	K-5			0	
RIDGEROAD	81708	K-5	47.55		28016	MS TO ES
TOTAL					227104	
<div style="display: flex; justify-content: space-between;"> <div> <p>TOTAL REQUIRED SF OF NEW SCHOOL CAMPUS (from new school summary POR)</p> <p>268588</p> <p>TOTAL EXCESS SF OF EXISTING SCHOOLS</p> <p>227104</p> <p>NET FUNDED SF OF NEW SCHOOL CAMPUS</p> <p>41481</p> </div> <div> <p>8,266.50 AVAILABLE PER SCHOOL BASED ON 4,4812</p> </div> </div>						

Approved Camp
3300
2789
3246
1244
2219
46409

Exhibit

JUL 25 2013

BEFORE THE ACADEMIC FACILITIES REVIEW BOARD

*In the Matter of the Appeal of the North Little Rock School District
Proposed Partnership Project Numbers 1314-6002-700, 701, 702, 703, 704*

DEPARTMENT OF EDUCATION
GENERAL DIVISION

**RESPONSE OF THE ARKANSAS DIVISION OF PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION**

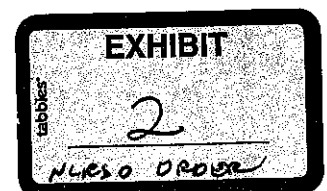
The Division of Public School Academic Facilities and Transportation ("Division") respectfully requests that the Academic Facilities Review Board deny the appeal of the North Little Rock School District and accept the determination of the Division for the following reasons.

I. SUMMARY OF ARGUMENT

The sole issue in this appeal is whether the Division acted outside of the authority vested in it by the law and Partnership Rules by including the space at the North Little Rock School District's Pike View Elementary School when conducting a suitability analysis for the construction of five new elementary school buildings.

In its Appeal, the North Little Rock School District contends that the Division should not have included the space at Pike View Elementary as available elementary education space in the suitability analysis conducted under section 3.32.2 of the Partnership Rules. The District reasons that although Pike View Elementary served K-5 students through the 2012-2013 school year, the District plans to move those students to a newly constructed facility and replace the K-5 students with pre-K students. The District alleges that because pre-K buildings are not "academic facilit[ies]" under the Partnership Rules (and thus not eligible for Partnership funding), the space that the District plans to use for pre-K students should not be counted as available space.

The problem with this argument is that Pike View Elementary has space to serve K-5 students (as it did through the 2012-2013 school year), and the District's desire to move the K-5



students out and replace them with pre-K students does not change that fact. In an October 2011 meeting (prior to the District's submission of its project application), the Division told the District that the Pike View Elementary space *would be counted* in the suitability analysis because the space was available for K-5 students, even though the District wanted to re-purpose it for pre-K use. The District's desire to change the nature of this building to a non-"academic facility" that is not eligible for Partnership funding does not change the fact that the space is available for elementary education, and the Partnership Rules therefore require the Pike View Elementary space to be included in the suitability analysis. Any other conclusion would circumvent the Partnership Rules' suitability process. Under the District's logic, a school district that wanted to construct new buildings with state financial participation under the Partnership Program would need only re-purpose one or more of its buildings to a non-academic use and then seek Partnership money for the new construction. This would effectively result in the Partnership Program funding non-academic facilities, which violates the law and Rules.

The District also erroneously argues that because the Facility Condition Index ("FCI") of Pike View Elementary is greater than 65% (i.e., to renovate the building would cost more than 65% of the replacement cost) and Section 4.03 of the Partnership Rules thus could authorize its demolition, that space should not be counted in the suitability analysis. The problem with this argument is that the District does not want to (and has not asked to) demolish the building. Rather, it wants to replace the K-5 students served in the building with pre-K students. At bottom, the Pike View Elementary space *remains available* to house K-5 students; consequently, that space must be counted in the suitability analysis. Furthermore, there are many academic facilities in use in the state where the FCI is above 65% and nothing in the law or Rules requires

the demolition of such an academic facility. And there is nothing that exempts the space of such a facility from being included in a suitability calculation.

The North Little Rock School District has requested a hearing.

II. STATEMENT OF FACTS

The North Little Rock School District submitted an application to the 2013-2015 Academic Facilities Partnership Program involving a district-wide project, which included the construction of five new elementary school (K-5) buildings. As part of its overall plan, the District sought to move K-5 students from its Pike View Elementary School to one of the newly-constructed facilities, and use Pike View to serve pre-K students who previously were housed at another District building. In performing the suitability calculation as required by the Partnership Rules, the Division included the space at Pike View Elementary as space available for K-5 education. The sole issue in the present appeal is whether the Division acted outside of the authority vested in it by the law and Partnership rules by including the Pike View space in the suitability calculation.

Partnership Program funding is available only for a school district's "academic facilities." *See e.g., Ark. Code Ann. § 6-20-2507 et seq.* The Partnership Rules provide that "[b]uildings or spaces . . . used for pre-kindergarten education shall not be considered academic facilities for purposes of these Rules." *See Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program dated July 2012 ("Partnership Rules"), Rule 3.01.3.* Stated differently, school district buildings used for pre-K programs are not eligible for Partnership Program funding.

“Suitability” is defined and governed by the Partnership Rules. As the District recognizes, the Rule governing suitability in this matter is set forth at 3.32.2.¹ See District Appeal Brief at 4 (“the District contends that the proper suitability analysis . . . falls under Section 3.32.2). That Section provides in relevant part:

3.32.2 On a New School Campus:

When a school district is proposing to build a new academic facility on a school campus for which the Division determines there are no other currently existing appropriate school facilities . . . the Division shall compare the total gross square footage required by the POR² for the proposed facility for the appropriate student grade population to that currently existing total gross square footage available in the **district** for the appropriate student grade population in their final grade configuration less the gross square footage to be demolished as part of the proposed project. The Division shall also include other campuses and grades affected by grade reconfigurations as part of the project. After making the comparison the school will only be deemed to not be suitable and thus eligible for state financial participation on a proposed facility project for that additional space required in the POR *not currently available in the school district for the appropriate student population in their final grade reconfiguration.*

Partnership Rules, Section 3.32.2 (bold in original, other emphasis added).

In performing the suitability analysis, the Division used the POR to compute the required total space for one new elementary school. Because the District proposed to build five, the Division then multiplied that number by five to determine the total required new space for the five schools. In calculating the existing K-5 educational space available in the school district, the Division included that at Pike View Elementary School, *which was housing (and continued to house through the 2012-13 school year) K-5 students.* In a meeting between the Division and

¹ Because both the District and Division agree that suitability in this matter is governed by Rule 3.32.2, the District’s Rule 3.32.1 suitability argument is superfluous and will not be addressed in this Response.

² The “POR,” or Program of Requirements, is defined by Section 3.21 of the Partnership Rules as: [t]he requirements that each new construction project . . . is required to adhere to as the established minimum adequate components, and total square footage required in a school construction project.

District held prior to the District's application for Partnership Program funding for the 2013-15 cycle, the Division told the District that the Pike View Elementary space *would be counted* in the suitability analysis because the space was available for K-5 students, regardless of whether the District wanted instead to use it to house pre-K students.

III. APPLICABLE LAW AND ADMINISTRATIVE RULES

A. Academic Facilities Partnership Program

The statutory authority for the Academic Facilities Partnership Program is found at Ark. Code Ann. § 6-20-2507, which vests with the Division the authority to make Partnership Program funding decisions. The Commission promulgated rules and regulations necessary to administer this program pursuant to the authority vested in it by Ark. Code Ann. § 6-20-2512. *See* Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program dated July 2012 ("Partnership Rules"). The matter presently before this Board involves the appeal of the North Little Rock School District from a determination made by the Division regarding the inclusion of space at the District's Pike View Elementary School as space available to the District's K-5 student population when conducting a suitability analysis under Section 3.32.2 of the Partnership Rules. *See* Ark. Code Ann. 6-20-2513 (provides for school district appeal to this Board).

B. Academic Facilities Review Board

The Academic Facilities Review Board was created by Ark. Code Ann. § 6-20-2516 to hear appeals filed by school districts Partnership Program funding determinations made by the Division. Pursuant to the authority vested in this Board by Ark. Code Ann. § 6-20-2516, this Board, along with the Commission, established procedures for conducting hearings and appeals.

Those procedures are set forth in the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation dated June 2012 ("Appeal Rules").

IV. STANDARD OF REVIEW AND BURDEN OF PROOF

Pursuant to Section 2.03 of the Appeal Rules, the appealing school district has the "burden of proving that the Division's written determination is not supported by substantial evidence or is outside the legal authority vested in the Division." The Appeal Rules define "substantial evidence" as follows:

'substantial evidence' means relevant evidence that a reasonable mind might accept to support a conclusion. Substantial evidence is not based upon speculation and conjecture. A review of substantial evidence is not based upon whether the facts would have supported a contrary finding by the Division, but whether the facts supported the finding made by the Division.

Appeal Rules, Section 2.04. In this matter, the North Little Rock School District alleges the Division acted outside of its legal authority by including the Pike View Elementary space in its suitability calculation, offering two alternate theories. *See* Appeal Brief at 1. The District has failed to meet its burden in either case.

V. ARGUMENT

To meet its burden, the District must prove that the law and Rules require the Division to allow a school district to convert a Partnership Program eligible academic facility to a non-academic use and not have that conversion count against the district's projects in the determination of suitability. Because the law and Rules contain no such mandate, the District failed to meet its burden of proving that the Division acted outside the scope of its legal authority

in counting the space at the Pike View Elementary School in the suitability analysis. To the contrary, the Division acted consistently with the suitability Rules by including as available K-5 space the Pike View Elementary School building. At bottom, the District has space at Pike View Elementary that it can use (and *did* use during the 2012-13 school year) to serve its K-5 students, and the District's desire to serve pre-K students in that building does not change the fact that the space is there for K-5 education.

Also, if the District's logic were followed, it would mean that a school district could reconfigure all of its facilities to pre-K or some other non-academic use and then require the state to participate financially to build all new facilities without suitability reductions since there would be no academic facilities to reduce the suitability requirement for the replacement facilities. The net result would be that the Partnership Program would fund pre-K facilities, which the law and Rules prohibit. This same reasoning refutes any District suggestion that Rule 3.08 gives a school district some absolute authority to re-configure school buildings in any way it deems fit (including converting them to a non-academic purpose) yet remain eligible for Partnership funding. *See e.g.* District Appeal Brief at 2.

The District's "FCI"/"prudent and resourceful use of state funds" argument based on Rule 4.03 (*see* District Appeal Brief at 5) likewise must fail. In fact, the FCI (or "Facility Condition Index," *see* Rule 3.13) is irrelevant to this project. The FCI is one of the resources or guides for the Division to approve or deny a District's request to replace/demolish a facility rather than renovate the facility per section 4.03 of the Rules. In general, when the FCI is above 65%, the Division agrees that the facility may be demolished and replaced. The North Little Rock School District made no request, however, to demolish or replace the Pike View campus since the District's plan was to re-purpose the campus to serve pre-K students. If Pike View

Elementary currently is suitable for the education of pre-K students, the District could continue to use it to educate K-5 students. There are many academic facilities currently in use in the state where the FCI is above 65%, and nothing in the law or Rules requires the demolition of such an academic facility. Nor is the space of these facilities excepted from the suitability analysis.

Because the Division's decision was wholly within the authority vested in it by the law and Partnership Rules, the Division's appeal must fail.

VI. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Board deny the appeal of the North Little Rock School District and uphold the determination of the Division.

Respectfully submitted,

 7/25/2013
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Director

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